IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13382 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LILABEN W/O.RAJUBHAI BABUBHAI CHUNARA
Versus
COMMISSIONER OF POLICE AND OTHERS

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Appearance :
MR PRAVIN GONDALIYA for the Petitioner
MRS HB PUNANI, ASSISTANT GOVERNMENT PLEADER for the Respondents

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 02/09/2005

ORAL JUDGMENT

The contention is raised in this petition about non-supply of relevant material, depriving the detenu of making effective representation to the order of detention, as enshrined under Article 22(5) of the Constitution of India vitiates the order of detention dated 18th June 2005 passed by respondent No.1 - Commissioner of Police in exercise of power under Section 3, Sub-section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, 'the PASA Act').

The challenge to the order of detention dated 18th June 2005 is restricted by the learned advocate for the petitioner on the aspect of non-supply of a report submitted by the Police Inspector to the Sub-divisional Magistrate, Ahmedabad with regard to violation of condition of bail as ordered under Section 93 of the Bombay Prohibition Act. Shri Gondaliya, learned counsel

for the petitioner contended that in the order of detention it is stated that in the compilation of the material supplied to the detenu alongwith order of detention at serial No.54 mentions about report submitted to the Sub-divisional Magistrate, Ahmedabad at page Nos.127 to 128. While referring to the above document at page No.127, learned counsel for the petitioner submitted that the said report is not pertaining to the petitioner and it states about one Shri Baldev @ Sitaram Chaganbhai Makwana, resident or Vijaynagar Housing Society, Ahmedabad. The said report is dated 19th April 2005.

Therefore, according to learned counsel for the petitioner, the said report has found placement in the order of detention and not only that, but the detaining authority has placed reliance on the said report while referring to it and while arriving at subjective satisfaction about violation of condition of bail as granted

in exercise of power conferred under Section 93 of the Bombay Prohibition Act and according to Shri Gondaliya, learned counsel for the petitioner, such a vital and relevant material is not supplied to the petitioner which deprives the constitutional right of the petitioner to make effective representation against the order of detention, as guaranteed under Article 22(5) of the Constitution of India and, therefore, the order of detention is vitiated on the ground of not affording reasonable opportunity to the petitioner.

It is evident from the record that page No.127, a part of compilation supplied to the detenu alongwith the order of detention is a different report prepared and submitted to the Sub-divisional Magistrate, Ahmedabad for other bootlegger as stated therein was required to be given to the detenu is the report about violation of condition of bail as prepared by the concerned

officer. The above fact is fortified by the document dated 01.07.2005 produced by the learned counsel for the petitioner alongwith additional affidavit filed by the detenu which also mentions that the document as asked for by was supplied to the petitioner at page No.127. When the said vital document is not supplied to the petitioner, has not been disputed by the learned Assistant Government Pleader appearing for the detaining authority.

This is a sufficient ground to hold the order of detention dated 18th June 2005 as illegal and invalid. The petition succeeds on this ground alone viz. a vital and relevant document given to the Sub-divisional Magistrate, Ahmedabad by the concerned officer is not supplied to the petitioner, depriving him of making effective representation against the order of detention and, therefore, the same being violative of Article 22(5) of the Constitution of India

requires to be quashed and set aside and it is hereby quashed and set aside. Petitioner detenu is set at liberty forthwith, if he is not required in any other case by any other authority. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(ANANT S.DAVE, J.)

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